

## PREPARING A RATE APPLICATION: PRACTICE POINTS

### I. INTRODUCTION

### II. METHODS FOR ADJUSTING RATES

#### A. Two methods for adjusting a municipal rate.

1. Filing a rate schedule or contract containing the proposed rate(s).
2. Filing an application for rate adjustment.

#### B. Rate Schedule Filing.

1. 807 KAR 5:011, Section 9(1):

When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190.

2. Thirty (30) days' notice must be given to the Commission before rate becomes effective.

a. KRS 278.180(1) provides that "no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect."

b. No retroactive rates. See City of Franklin v. Simpson County Water District, Case No. 92-084 (Ky.PSC Jan. 18, 1996) (holding that the PSC may not retroactively approve the rates which a municipal utility charges a public utility for wholesale utility service).

3. Notice need only be given to the affected public utility. See Letter from Helen C. Helton, PSC Executive Director, to Municipal Utilities 2 (Dec. 18, 1998).

4. Content and form of rate schedule. See 807 KAR 5:011, Section 6.

5. Contract in lieu of tariff sheets/rate schedule.

a. If changes to the existing contract require an amendment or entirely new contract, the amendment or new contract may be filed in lieu of any rate schedule. **Notice provisions (to PSC and to customers) must still be followed.**

b. If contract terms do not change but the rate is changing based upon the provisions of the contract, a rate schedule is necessary to reflect the actual rate that is currently charged or will be charged.

6. Time Considerations

a. KRS 278.190(2):

Pending the hearing and the decision thereon, and after notice to the utility, the commission may, at any time before the schedule becomes effective, suspend the operation of the schedule and defer the use of the rate, charge, classification, or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect if an historical test period is used, or longer than six (6) months if a forward-looking test period is used, pursuant to KRS 278.192; and after such hearing, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make those orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of five (5) months, or six (6) months, as appropriate, the utility may place the proposed change of rate, charge, classification, or service in effect at the end of that period after notifying the commission, in writing, of its intention so to do.

b. PSC must act upon the proposed rate adjustment prior to its effective date.

(1) PSC may suspend the effectiveness of the proposed rate for a period of 5 months to conduct further investigations. At the end of suspension period, the utility may place the rate into effect subject to refund.

(2) Failure to act before effective date allows the rate to become effective. Municipal utility may charge the rate. In any subsequent challenge to the rate, the challenger bears

the burden of proof to demonstrate that the rate is unfair, unjust or unreasonable.

c. If PSC suspends the rate before its effective date, it has 10 months from the date of the filing of the rate schedule to issue a final decision. KRS 278.190(3). Failure to act within 10 months constitutes approval of the proposed rate.

d. PSC may place rate into effect at earlier date upon showing that utility's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective. KRS 278.190(2).

7. Events upon suspension.

a. Previously the PSC required a municipal utility to provide the information necessary for a general rate adjustment application. See, e.g., Bowling Green Municipal Utilities, Case No. 95-044 (Ky.PSC April 7, 1995) at 3. Requirements for such filing are set forth in 807 KAR 5:001, Section 10.

b. Recently the PSC did not require utility to meet the requirements of 807 KAR 5:001, Section 10, but instead propounded an extensive set of interrogatories that addressed most of the applicable filing requirements in that regulation. See, e.g., City of Pikeville, Case No. 2000-540 (Ky.PSC Dec. 19, 2000).

c. Normal rate case procedure is followed.

B. Rate Application Method

1. Content and form of application. See 807 KAR 5:001, Section 10. PSC will liberally grant requests for deviation from these requirements. Bowling Green Municipal Utilities, Case No. 95-044 (Ky.PSC April 7, 1995) at 3.

2. Thirty (30) days' notice must be given to the Commission before rate becomes effective. Same as "Rate Schedule Filing Method."

3. Notice must be given to the affected public utility. 807 KAR 5:001, Section 10(3).

4. If municipal utility is proposing to place the rate into effect before the completion of any PSC proceeding, a rate schedule must be filed with application.

5. Time Considerations are the same as those for the “Rate Schedule Filing Method.”

C. Differences in Filing Methods.

1. “Rate Application Method” is more labor intensive and requires greater preparation.

2. “Rate Application Method” allows the municipal utility to go directly into discovery phase of proceedings without much delay.

3. If wholesale customer does not object to the proposed adjustment, “Rate Schedule Filing Method” is the preferred method.

D. PSC Treatment of Filings.

1. If no objection by interested parties, then Commission normally allows rates to become effective without further action.

2. If objection or request for review/intervention, then rate is suspended and investigation is conducted.

3. Rationale for Treatment: PSC merely substitutes for the courts. It applies the terms of the contract to the facts before it. It may not rewrite terms of the contract unless contract law permits. PSC does not sit as a rate-making authority when adjudicating contract issues. If no dispute regarding the proposed rate exists, then no need for further investigation.

4. Problems with Current Treatment.

a. Public utilities may not be aware of the need to intervene or may assume that PSC is affording the same level of scrutiny to municipal filings as it does to regulated filings.

b. This approach is inconsistent with the theory that municipal utilities have lost their exemption by contracting with public utilities, have become public utilities, and therefore should be treated as other public utilities.

### **III. RATE SCHEDULE FILING METHOD – WHAT TO FILE?**

A. Required Documents.

1. Revised rate schedule.

2. Notice to wholesale customer.

3. Proof of Notice

B. Helpful Documents.

1. Ordinance of the municipal utility's governing body approving the proposed rate adjustment. See Winchester Municipal Utilities, Case No. 96-616 (Ky.PSC Oct. 3, 1997) at 6 ("[A]ny application for the adjustment of existing rates or the establishment of new rates which lacks the requisite authorization from its governing body is premature and must be dismissed. . . . Only when a utility's governing body has expressly authorized the rates for which Commission approval is sought will this Commission review the merits of the proposed rates.").

2. Cost-of-service study.

**IV. APPLICATION METHOD – WHAT TO FILE?**

A. Required Documents – See 807 KAR 5:001, Section 10.

B. Helpful Documents. See generally City of Pikeville, Case No. 2000-540 (Ky.PSC Dec. 19, 2000).

1. Ordinance of the municipal utility's governing body approving the proposed rate adjustment.

2. Cost-of-service study.

3. Independent Auditor's Report for the test period.

4. Enterprise Funds Uniform Financial Information Report for test period.

5. System maps.

6. Water usage information.

7. Testimony of expected witnesses.

**V. PRE-APPLICATION ACTIVITIES**

A. Municipal Utility

1. Conduct advance planning for municipal rate adjustments. Try to anticipate when a filing will be necessary at least 12 months out. Communicate this planning to the wholesale customer.

2. Gather and organize records.
3. Commission a cost-of-service study if one has not been conducted recently.
4. Retain expert witnesses early. If witnesses are already on retainer, bring them into the process early.
5. Identify areas of concern and potential problems with the proposed rate adjustment.
6. Research problem legal areas.
7. Request negotiations. Be prepared to document financial conditions and to open records for inspection by wholesale customers.
8. **Do not wait until filing of the rate schedule or rate application to commence negotiations.**

“[W]e place Warsaw and all other municipal utilities on notice that settlement negotiations will no longer be reviewed as an acceptable grounds for disturbing the discovery and hearing process. Municipal utilities should conduct their negotiations either prior to the filing of their proposed rate adjustments or concurrent with the discovery process before the Commission. While the Commission continues to encourage the amicable settlement of rate disputes between municipal and public utilities, we cannot allow the orderly administration of the Commission’s statutory duties to be held hostage to the parties’ lackadaisical approach to negotiation.”

See City of Warsaw, Ky., Case No. 99-131 (Ky.PSC Nov. 8, 1999) at 2 (emphasis in original).

9. Document negotiations.
10. Consider arbitration/mediation.
11. Prepare testimony and final application.

B. Wholesale Customer

1. Request information from the municipal utility.
2. Open Records Act requests.

3. Retain expert witnesses early. If witnesses are already on retainer, bring them into the process early.
4. Identify areas of concern and potential problems with the proposed rate adjustment.
5. Request negotiations. Document requests.
6. Document negotiations.
7. If municipal utility has not conducted a cost-of-service study, propose that such study be conducted.
8. Negotiate in good faith.
9. If negotiations are unsuccessful, monitor PSC filings. Be prepared to move quickly to intervene and to request suspension.

C. Resources to use when preparing.

1. PSC Web Site: [psc.ky.gov](http://psc.ky.gov)
2. PSC Text Retrieval System
3. Public Utilities Reports
4. American Water Works Association M1 Manual
5. Commission Staff

## **VI. CUSTOMER COMPLAINT – WHOLESALE CUSTOMER'S PROCESS FOR SEEKING A RATE REDUCTION**

A. KRS 278.260(1):

The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient.

The commission may also make such an investigation on its own motion. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.

B. Complaint Process: An Overview

1. Wholesale Customer files a complaint against municipal utility supplier with PSC.
2. PSC determines whether the complaint states a *prima facie* case.
3. If *prima facie* case stated, then municipal utility directed to answer complaint.
4. Discovery conducted.
5. Hearing.
6. Burden of proof is upon wholesale customer to demonstrate that the proposed rate is unlawful or unreasonable. Because it bears the burden, the wholesale customer must be prepared to present a cost-of-service study.

C. When complaint process should be used.

1. Wholesale customer has the resources.
2. Great disparity in the current rate and actual cost-of-service.
3. Likelihood that municipal utility will seek rate adjustment in near future is small.

**VII. SUMMARY**



